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No. 96-910

In The
Supreme Court of the United States
October Term, 1996

CITY OF CHICAGO, et al.,
Petitioners,

vs.

INTERNATIONAL COLLEGE OF SURGEONS, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals For The Seventh Circuit

BRIEF OF DEFENDERS OF PROPERTY RIGHTS AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY, BUT IN SUPPORT OF REVERSAL OF THE DECISION BELOW

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QUESTION PRESENTED FOR REVIEW

Do federal district courts have supplemental claim jurisdiction to conduct record review of state law claims?

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Pursuant to Rule 37.3 of the Rules of this Court, *amicus curiae* submits this brief in support of neither party, but in support of reversal of the decision below.[1] Both parties have consented to the filing of this brief.

IDENTITY AND INTEREST OF *AMICUS CURIAE*

Defenders of Property Rights is the only national legal defense foundation devoted exclusively to protecting private property rights. Defenders was founded as a non-profit, public interest firm in 1991 in recognition that property rights are today under siege by excessive government regulations and actions which have the effect of rendering the Fifth Amendment's Just Compensation Clause worthless. Defender has represented numerous property owners seeking to protect their constitutional rights in federal courts, and many of these property owners have faced substantial barriers to having their constitutional claims fully adjudicated in federal court.

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[1]No counsel for either party authored this brief *amicus curiae*, either in whole or in part. Furthermore, no persons other than *amicus curiae* (its members or counsel) contributed financially to the preparation of this brief.

STATEMENT OF THE CASE

This case concerns the question of whether federal courts have supplemental claim jurisdiction under 28 U.S.C. § 1441 to hear state law claims involving record review of state administrative decisions.

This case grows out of Respondent's, the International College of Surgeons (the "College"), plans to demolish two buildings located on its property on Lake Shore Drive in Chicago. Those plans were thwarted because of the city's designation of the two buildings designated as historic landmarks. The city, in separate administrative hearings, denied both the College's demolition permit applications and applications for hardship exception under the Landmarks Ordinance. The College then filed separate record review challenges in state court alleging violations of both state and federal law in refusing to grant the permits or hardship exception. The College's federal law counts included constitutional claims that the city's decisions denied the College its due process rights under the Fifth and Fourteenth Amendments, violated its right to equal protection under the

Fourteenth Amendment, and constituted an uncompensated taking of property in violation of the Fifth and Fourteenth Amendments. The city removed the cases to federal court, where they were dismissed on the merits.

The Respondent challenged these dismissals, saying that the federal district court did not have jurisdiction to hear the state law claims, since the Illinois Administrative Review Law mandates that administrative decisions of state agencies be challenged on the administrative record with a deferential standard of review. Pet. App. 18a-19a. The College asserted that these state law claims thus do not constitute "civil actions" over which federal courts have jurisdiction pursuant to 28 U.S.C. § 1441. The United States Court of Appeals for the Seventh Circuit held that the removal of the state law claims was barred for this reason, and remanded the cases back to state court.

SUMMARY OF ARGUMENT

Under the decision of the court below, a plaintiff would be precluded from bringing both state and federal law claims in federal court if his state law claims would be

limited to record review in state court. Pet. App. at 22a. Plaintiffs seeking just compensation for the deprivation of their property rights already face substantial hurdles to having their claims heard in federal court. *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985). If these property owners are denied jurisdiction over supplemental state law claims merely because these claims call for record review of a state administrative decision, their access to the federal courts would be even further threatened.

This increased burden is unnecessary. No prior decisions of this Court mandate that federal courts decline jurisdiction over record review claims arising under state law. Moreover, 28 U.S.C. § 1367(c) already provides federal courts the power to decline jurisdiction over state law claims where federal adjudication would interfere with the sovereignty of state courts.

ARGUMENTS

I. THE DECISION OF THE COURT BELOW, IF UPHELD, WILL FURTHER INCREASE THE BARRIERS FACED BY PRIVATE PROPERTY OWNERS IN HAVING THEIR CLAIMS FOR JUST COMPENSATION HEARD IN FEDERAL COURT.

If the decision of the court below is upheld, property owners denied reasonable use of their property by state agency decisions would be left with a difficult and unpalatable choice: have their federal constitutional claims heard by a state court or forgo their state law claims should they choose a federal forum to pursue their lawsuit. A state or local government could effectively prevent federal courts from hearing claims for just compensation against them merely by limiting review of the agency decision in state court to the administrative record.

Property owners already face tremendous procedural hurdles to have their Fifth Amendment claims for just compensation heard based upon the stringent ripeness requirements imposed by this Court in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985). In *Williamson County*, this Court held that

property owners seeking just compensation under the Fifth Amendment may not bring such a claim in federal court until they have sought, and been denied, compensation in state courts. *Id.* at 194.

Just compensation claims under the Fifth Amendment are the only type of federal constitutional claims where a plaintiff must first attempt to vindicate their rights in state court before a challenge can be heard in federal court. Indeed, "it is a basic constitutional principle that a federal court has a duty to review laws for constitutional infirmities. . . ." *Government Suppliers Consolidating Serv. v. Bayh*, 753 F. Supp. 739, 757 (S.D. Ind. 1990)(citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)). Plaintiffs seeking just compensation for state actions, however, do not receive the benefits of this "basic constitutional principle" unless they are prepared to spend many years exhausting administrative and state judicial remedies. The decision of the court below could have the effect of wiping out entirely the federal courts' duties to many landowners seeking just compensation under the Fifth Amendment.

The case of Richard and Ann Reahard provides an excellent example of the difficulty landowners face in having their just compensation claims adjudicated in federal court. The Reahards own property in Lee County, Florida that was designated a "resource protection area" by the county in 1984. Subsequently, the Reahards spent five years exhausting their administrative remedies. After being denied administrative relief, the Reahards filed a just compensation claim against the county in state court in 1989, but the county immediately had the case removed to federal court. After a tortured procedural history which involved a jury award twice being granted to the plaintiffs, the United States Court of Appeals for the Eleventh Circuit *sua sponte* concluded, citing *Williamson County*, that the case was not ripe for adjudication in federal court, and remanded the case back to the state court where it had originally been filed in 1989. *Reahard v. Lee County*, 30 F.3d 1412 (11th Cir. 1994), *cert. denied*, 115 S. Ct. 1693 (1995). At present, the Reahards are still litigating their claim in state court, eight years after the case was originally filed. The lack of a federal forum for their lawsuit has left the Reahards still engaged in a legal

fight for constitutionally mandated just compensation thirteen years after the county's actions rendered their property virtually worthless.

During the current session, this Court has held a landowner's federal constitutional claims against a local government entity ripe for review in federal court. *Suitum v. Tahoe Reg'l Planning Agency*, 65 U.S.L.W. 4385 (U.S. May 27, 1997)(No. 96-243). Having already opened the doors of the federal courthouse to property owners in one case during this session, this Court should not help to shut them again by upholding the decision of the court below.

II. FEDERAL COURTS REGULARLY HEAR RECORD REVIEW CHALLENGES PURSUANT TO BOTH FEDERAL AND STATE LAW AND ALREADY POSSESS ABILITY UNDER 28 U.S.C. § 1367(c) TO REFUSE JURISDICTION OVER STATE LAW CLAIMS.

Federal district courts hear record review appeals on a regular basis through Administrative Procedure Act challenges to federal agency decisions. *See, e.g., Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985)("The APA specifically contemplates judicial review on the basis of

the agency record. . . .") This Court has never held that federal courts are barred from similarly hearing record review appeals of state agency decisions. Moreover, there is no support in prior decisions of this Court for the novel theory, advanced by the court below, that record review challenges of state agency actions are not "civil actions" within the meaning of 28 U.S.C. § 1441. Essentially, Respondents are asking this Court to "write in" a new requirement for both federal removal and supplemental claim jurisdiction where such a provision clearly does not exist.

If a federal district court is concerned that adjudicating a state law claim would intrude on the independence and sovereignty of state courts, it is already empowered to refuse jurisdiction over those claims. 28 U.S.C. § 1367(c). Such situations, however, are relatively rare because Section 1367(c) sets forth clear requirements for federal courts to exercise this option. Accordingly, federal courts commonly hear claims involving issues of state law interpretation because the state law claims meet the criteria set forth in Section 1367(c).

CONCLUSION

The interests of property owners whose constitutional rights have been infringed by state agency decisions seeking to litigate their disputes in federal court will be harmed if this Court adopts the jurisdictional requirement advanced by Respondents. Accordingly, *amicus curiae* urges this Court to reverse the decision of the court below.

Respectfully submitted,

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